

Remarks/Arguments

This amendment is in response to the Office Action dated June 23, 2005. Claims 1-12 are pending. Claims 4 and 9 have been amended to particularly point out the invention. Support for the amendments is found in the specification on page 4, lines 24-25.

Objections to the Specification

The Office objects to the Abstract of the specification because the legal term "said" is used. Applicant has amended the Abstract by replacing the word "said" with the word "the," thus overcoming the objection.

Rejection Under 35 U.S.C. §112

Claims 4, 11, 9 and 12 stand rejected as allegedly indefinite. The Office believes that claims 4 and 9 repeat the phrase "having three first outlet conduits." Claims 11 and 12 are multiple dependent claims which depend in part on claims 4 and 9 respectively. Applicant has amended claims 4 and 9 such that the phrase "having three first outlet conduits," is recited only once in each of claims 4 and 9. Applicant submits the amendment obviates the rejection.

Rejection Under 35 U.S.C. §103

Claims 1-12 stand rejected as allegedly unpatentable over U.S. Patent No. 5,680,960 (Keyes) in light of U.S. Patent No. 3,607,100 (Croom). Claim 1 recites "a sight tube connected to each of said at least one outlet conduit, each of said sight outlet tubes having an interior wall tapered away from a central vertical axis of each of said sight outlet tubes." Claims 2-12 depend on claim 1.

The Office alleges that Keyes shows a reservoir, an inlet conduit, a first outlet conduit, a sight tube, a return conduit, a second outlet conduit, a first sensor, a second sensor, a first valve means and a second valve means. The Office admits that Keyes does not disclose the tapering of the

interior sight tube and the number of first outlet conduits, but alleges that Croom shows a tapering conduit and further alleges that providing additional outlet conduits would have been an obvious multiple use of an already employed structure. The Office concludes that it would have been obvious to the skilled artisan to provide a taper to the sight tube as taught by Croom in order to better control the flow out of the tube. The Office also suggests that it would have been obvious to provide additional outlet conduits.

The Prima Facie Case Requirement

The Patent and Trademark Office (PTO) bears the burden of initially establishing a prima facie case of obviousness. MPEP § 2142. MPEP § 2143 provides the standard required to establish a prima facie case of obviousness. "First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine what the reference teaches. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references combined) must teach or suggest all the claim limitations." The motivation to make the claimed invention and the reasonable expectation of success must both be found in the prior art, not the applicant's disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1438, 1442 (Fed. Cir. 1991). The references must be considered as a whole and must suggest the desirability, and thus the obviousness of making the combination. *Hodosh v. Block Drug Co., Inc.*, 229 U.S.P.Q. 182, 187 n.5 (Fed. Cir. 1986); MPEP § 2141. Applicant respectfully submits that the Office has not met its burden in this case.

No Motivation to Combine the References Existed

According to the Office the skilled artisan would be motivated to combine the apparatus of Keyes with a tapered tube of Croom to achieve better control the flow out of the tube. However,

nothing in either reference suggests that a tapered tube will provide better control of flow. Croom does not attribute any benefit to the fact that tube is tapered. Indeed, Croom suggests flow rate is controlled by a stopcock (column 2, lines 51-55). Moreover, Applicant's own specification teaches that fluid in a sight tube of varying diameter travels at a slower velocity when it reaches the desired height in the tube. Thus control of the elevated fluid height is facilitated (page 3, lines 21-26). Applicant respectfully submits that the Office is relying on hindsight to provide the requisite motivation to combine the cited references. Because no motivation existed to combine Keyes with Croom the pending claims are not prima facie obvious in view of the cited references.

The References Do Not Teach All the Claim Limitations

Claim 1 recites "a return conduit connecting each of said sight outlet tubes to said reservoir, and a second outlet conduit connected to each of said sight tubes," (emphasis added). Applicant notes that Keyes does not disclose a second outlet conduit connected to each of said sight tubes, as recited in claim 1 (see figures 1, 3, 4, 5, 6, 7, and 8, Nos. 23 and 22). Croom does not cure this defect. Applicant submits that the cited references do not teach all of the claim limitations and thus the claims are not prima facie obvious in light of Keyes combined with Croom.

With respect to the claims reciting additional outlet conduits, Applicant submits that these claims are dependent on claim 1. Because the prima facie case fails with respect to claim 1 for the reasons set forth above, it must also fail with respect to each of the dependent claims.

Accordingly, Applicant respectfully requests withdrawal of the obviousness rejection.

Reconsideration and allowance of the remaining claims is respectfully requested in view of
the foregoing amendment and remarks.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "E Stewart Mittler". The signature is fluid and cursive, with the first name "E" being a large, stylized capital letter.

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